

REMARKS

I. Status of the Claims

This Application has been reviewed in light of the Office Action dated August 06, 2009. Claims 1–3, 10, 15, and 18 are presently pending and claim 18 has been withdrawn. Claims 1–3, 10, and 15 stand rejected. Claim 1 is amended herewith to more clearly define the invention. No new matter or issues are believed to be introduced by the amendment. Support for the amendment is found throughout the specification, drawings and originally filed claims.

II. Rejection of Claims 1-3, 10, and 15 Based on Nonstatutory Obviousness-Type Double Patenting

The Examiner rejected claims 1–3, 10, and 15 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1–9 of U.S. Patent No. 6,655,412. Applicant has included a terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) to obviate the nonstatutory obviousness-type double patenting rejection. Applicant respectfully submits that this rejection is improper and should be withdrawn. Reconsideration is respectfully requested.

III. Rejection of Claims 1–2 Under 35 U.S.C. § 102(b)

The Examiner rejected claims 1–2 under 35 U.S.C. § 102(b) as being anticipated by Johnstone et al. (U.S. Patent No. 3,770,016 “Johnstone”). The Examiner stated that Johnstone shows a valve with a main flow path and a drain port 34 with a drain valve 32. Applicant respectfully traverses this rejection.

Applicant respectfully submits that Johnstone does not disclose or suggest Applicant’s claimed invention as claimed in independent claim 1. Independent claim 1, as amended, recites:

1. “A fluid isolation valve comprising: a valve body, said valve body having a first fluid flow port, a second fluid flow port and a fluid drain port, wherein said valve body defines a fluid flow channel, a drain flow channel and a valve portion, said valve portion being disposed to be communicated with said first fluid flow port, said second fluid flow port and said fluid drain port; a flow diversion device disposed within said

valve portion, said flow diversion device configurable between a first configuration and a second configuration, when said flow diversion device is in said first configuration said first fluid flow port is communicated with said second fluid flow port and when said flow diversion device is in said second configuration said first fluid flow port is communicated with said fluid drain port; and a drain valve section separate from and adjacent to said valve portion, said drain valve section communicating with said fluid drain port in a controllable manner and said drain valve section having a drain port valve.” (emphasis added).

Specifically, Johnstone does not disclose or suggest a valve having “a first configuration and a second configuration,” as specifically recited in Applicant’s claim 1. Contrary to Applicant’s invention, Johnstone discloses a drain passage 30 in which the “entrance to the drain passage 30 is...in the outlet portion 18 of passage 11,” and “drains from the outlet portion 18 of the valve.” (See Johnstone, column 2, lines 60-65, and Fig. 1). According to, Johnstone a “connecting passage 41 in the cylindrical plug 36 joins the drain passage 30 to the drain outlet 34.” (See Johnstone, column 3, lines 17-20).

Further, Johnstone does not disclose or suggest a “valve body having...a fluid drain port...and a drain valve section separate from and adjacent to said valve portion, said drain valve section communicating with said fluid drain port in a controllable manner and said drain valve section having a drain port valve,” as specifically recited in Applicant’s claim 1. Rather, Johnstone discloses “a subsidiary valve 32,” which includes “a cylindrical housing 35” and a cylindrical plug or trunnion 36,” located “in the lower portion 33 of the body piece 14” and wherein the “cylindrical plug or trunnion 36...is connected to the spherical valve element 12.” (See Johnstone, column 3, lines 1-3 and 7-11). Therefore, Johnstone does not disclose or suggest Applicant’s invention as claimed in claim 1.

For at least these reasons Johnstone does not anticipate independent claim 1, and by extension claim 2 which is dependant thereupon. Applicant respectfully submits that this rejection is improper and should be withdrawn. Reconsideration is respectfully requested.

IV. Rejection of Claim 10 Under 35 U.S.C. § 103(a)

The Examiner has rejected claim 10 under 35 U.S.C. § 103(a) as being unpatentable over Johnstone. The Examiner stated that the use of known pipe connections such as a union connector is considered an obvious matter of design choice over the valve of Johnstone. Applicant respectfully traverses this rejection.

As discussed above, Johnstone does not disclose or suggest Applicant's claimed invention claimed in independent claim 1. Specifically, Johnstone does not disclose or suggest “[a] fluid isolation valve comprising...a valve body...having...a fluid drain port...configurable between a first configuration and a second configuration...and a drain valve section separate from and adjacent to said valve portion, said drain valve section communicating with said fluid drain port in a controllable manner and said drain valve section having a drain port valve,” as specifically recited in independent claim 1, and by extension claim 10 which depends from claim 1.

Therefore, for at least this reason Johnstone does not render independent claim 1 and by extension claim 10, which depends from claim 1, unpatentable. Applicant respectfully submits that this rejection is improper and should be withdrawn. Reconsideration is respectfully requested.

V. Rejection of Claims 1, 3, and 15 Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 1, 3, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Piper (U.S. Patent No. 4,479,459 “Piper”) in view of King (U.S. Patent No. 3,473,554 “King”), and further in view of Isringhausen (U.S. Patent No. 5,632,300 “Isringhausen”). In this rejection involving three references, the Examiner stated that Piper discloses a three way valve with four seats and a drain line. The Examiner acknowledges that Piper does not disclose or suggest a drain line ball valve. However, the Examiner suggests that King and Isringhausen cure the deficiencies of Piper. The Examiner stated King discloses a ball valve with a drain line and a drain valve, and Isringhausen discloses a valve with a drain line having a ball valve. Applicant respectfully traverses this rejection.

Applicant respectfully submits that Piper does not disclose or suggest Applicant's claimed invention as claimed in independent claim 1, as amended. The Examiner acknowledges that Piper does not disclose or suggest a drain line ball valve. Applicant respectfully submits that the combination of Piper, King, and Isringhausen does not disclose or suggest each and every element of Applicant's claimed invention, as recited in claim 1.

Specifically, Piper does not disclose or suggest a "valve body having...a fluid drain port...and a drain valve section separate from and adjacent to said valve portion, said drain valve section communicating with said fluid drain port in a controllable manner and said drain valve section having a drain port valve," as Applicant has claimed in claim 1. Rather, Piper discloses a "blow down pipe 60 extending downwardly from the body of valve mechanism 50." There is no disclosure or suggestion whatsoever in Piper regarding any "drain valve section." There is no disclosure or suggestion whatsoever in Piper regarding any "drain valve section separate from and adjacent to said valve portion." There is no disclosure or suggestion whatsoever in Piper regarding any "drain valve section communicating with said fluid drain port in a controllable manner." There is no disclosure or suggestion whatsoever in Piper regarding any "drain valve section having a drain port valve." Thus, Piper does not disclose or suggest a "valve body having ...a fluid drain port...and a drain valve section separate from and adjacent to said valve portion, said drain valve section communicating with said fluid drain port in a controllable manner and said drain valve section having a drain port valve," as Applicant has claimed in claim 1.

In contrast to Applicant's claimed invention, King discloses a through valve with a bleed opening. King does not disclose or suggest a "valve body having...a fluid drain port...and a drain valve section separate from and adjacent to said valve portion, said drain valve section communicating with said fluid drain port in a controllable manner and said drain valve section having a drain port valve." King does not disclose or suggest a "second configuration" wherein "said first fluid flow port is communicated with said fluid drain port," as Applicant has claimed in claim 1. Rather, King discloses a valve having "a bleed opening 70 which communicates opposite peripheral groove 68 of the valve seat when in position and thence to bleed line 72 and valve 74." (See King, column 3, lines 32-36). Applicant respectfully submits that a bleed line is

not a drain flow channel as Examiner suggests. The bleed line of King does not communicate with a first fluid flow port. The bleed line of King is a very small orifice which does not facilitate draining of a system in a particular configuration, but rather facilitates the bleeding off of very small quantities of pressure or fluid for the purpose of safety and optimization of processes. Thus, King does not cure the deficiencies of Piper in arriving at Applicant's claimed invention, as it does not alone or in combination with Piper disclose or suggest a "valve body having...a fluid drain port...and a drain valve section separate from and adjacent to said valve portion, said drain valve section communicating with said fluid drain port in a controllable manner and said drain valve section having a drain port valve," in the context of a valve having first and second configurations as Applicant has claimed in claim 1.

Further, in contrast to Applicant's claimed invention, Isringhausen discloses a steam trap having a "Y" configuration, and does not disclose or suggest a "valve body having...a drain flow channel...and a drain valve section separate from and adjacent to said valve portion, said drain valve section communicating with said fluid drain port in a controllable manner and said drain valve section having a drain port valve," as Applicant has claimed in claim 1. Rather, Isringhausen discloses "an offset steam trap...include[ing] a conventional Y-strainer fitting 10 having an inlet 12, a primary outlet 14, and a secondary outlet 16" for the purpose of removing condensed water from a steam line in which "a first nipple 24 connects the primary outlet to a main ball valve 26," which has a "flow path passing axially through it," and the "other arm of the "Y" includes a second nipple 48" which supports an auxiliary valve 50." (See Isringhausen, column 2, lines 1-3, 18-20 and 42-44, and Figs. 1-2, and 4-6). Isringhausen simply discloses two lines configured to form a "Y" and each having their own valve to open and close their respective lines. Like Piper and King, Isringhausen does not disclose or suggest a "valve body having...a fluid drain port...and a drain valve section separate from and adjacent to said valve portion, said drain valve section communicating with said fluid drain port in a controllable manner and said drain valve section having a drain port valve," as Applicant has claimed in claim 1. Thus, Isringhausen does not cure the deficiencies of Piper or King in arriving at Applicant's claimed invention, as it does not alone or in combination with Piper and/or King disclose or suggest Applicant's invention as recited in independent claim 1.

Since each and every element of Applicant's claimed invention is not disclosed or suggested in any cited reference alone or in combination, it appears that in asserting this three reference obviousness rejection the Examiner gleaned knowledge from the Applicant's disclosure contrary to *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (U.S. 2007), which states “[a] factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning.” Even assuming arguendo that the three references cited by the Examiner could be combined and/or modified as the Examiner has suggested in rejecting the claims, Applicant respectfully requests that the rejected claims be reconsidered in light of well-established legal principles, which provide,

“[a] patent [claim] composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known.” *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418-19 (2007).

The particular teachings that the Examiner suggests, in hindsight with the benefit of Applicant's disclosure, in an attempt to arrive at the Applicant's claimed invention, is neither disclosed nor suggested by any of the cited references. Applicant respectfully submits that hindsight construction of Applicant's claimed invention by modifying and combining three references is improper.

The teachings of Piper, King, or Isringhausen alone or in combination do not disclose or suggest each and every element of Applicant's claimed invention, and in any event the three references do not provide “sufficient impetus” to combine the three references to arrive at Applicant's claimed invention in order to support the obviousness rejection.

In any event, Applicant's claimed invention is patentably distinct from what is disclosed or suggested by Piper, King, and Isringhausen alone or in combination. The three references that the Examiner combines with the benefit of hindsight and Applicant's disclosure do not disclose or suggest each and every element of Applicant's claimed invention, as recited in claim 1. Applicant respectfully submits that the teachings of Piper, King, or Isringhausen alone or in combination do not render independent claim 1, and by extension claims 3 and 15 which are dependent thereupon, obvious to one skilled in the art. Therefore, Applicant respectfully submits that this rejection is improper and should be withdrawn. Reconsideration is respectfully requested.

CONCLUSION

For at least the reasons set forth above, reconsideration and allowance of this Application are believed to be in order, and such action is hereby solicited. If any issues remain that the Examiner feels may be best resolved through a telephone interview, the Examiner is invited and encouraged to telephone the undersigned with any concerns in furtherance of the prosecution of the present Application.

Please charge any deficiency as well as any other fee(s) which may become due at any time during the pendency of this Application, or credit any overpayment of such fee(s) to Deposit Account No. 50-2896.

Respectfully Submitted,

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